



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ASA K. RICHTER)

Appearances:

For Appellant: Asa K. Richter, in pro. per.

For Respondent: Jean Harrison Ogrod
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Asa K. Richter against proposed assessments of additional personal income tax in the amounts of \$6,875.90 and \$7,663.62 for the years 1974 and 1975, respectively.

Appeal of Asa K. Richter

Appellant submitted California personal income tax forms for 1974 and 1975 which contained no information regarding his income, deductions, or credits (other than the personal exemption credit). Instead, he wrote in "n/a" or "5th Amendment" on almost all lines of the forms and attached a letter noting his assertion of his privilege against-self-incrimination. When appellant failed to act on respondent's demand that valid returns be filed, the subject assessments were issued. The assessments were based on appellant's 1973 reported gross income from his massage parlour business, with a ten percent increase added for each year, and his 1973 reported interest and dividend income, which was increased by five percent for each year.

Appellant contends that his Fifth Amendment right against self-incrimination has been properly asserted, and to require him to provide tax information would violate this right. He also asserts that respondent's estimate of his income is "arbitrary and erroneous."

Whether or not appellant's Fifth Amendment claim was properly asserted, section 3.5 of article III of the California Constitution precludes us from determining that the statutory provisions involved are unconstitutional or unenforceable. Furthermore, this board has a well established policy of abstaining from deciding constitutional questions in appeals involving deficiency assessments. (Appeals of Fred R. Dauberger, et al., Cal. St'. Rd. of Equal., March 31, 1982.) We note, however, that blanket declarations of the Fifth Amendment privilege do not constitute valid assertions thereof. (Appeals of Fred R. Dauberger, et al., supra.)

Regarding respondent's determination of appellant's income for 1974 and 1975, appellant has made no attempt to show that it was erroneous. Appellant quite properly bears the burden of proof on this issue, being the party in control of the pertinent facts, and having failed to provide any information about his income or deductions, is not in a good position to criticize respondent's estimates. (Appeals of Fred R. Dauberger, et al., supra.)

Finding no basis in the record to overturn respondent's action, it is sustained.

Appeal-of Asa K. Richter

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY OKDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of **Asa K. Richter** against proposed assessments **of** additional personal income tax in the amounts of **\$6,875.90** and **\$7,663.62** for the years 1974 and 1975, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Mevins present.

William M. Bennett, Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

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